

Resolution No.: 16-400  
Introduced: December 4, 2007  
Adopted: December 4, 2007

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND**

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By: District Council

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**SUBJECT:** Extension of Time for Council Action on Local Map Amendment G-862 and G-863

**Background**

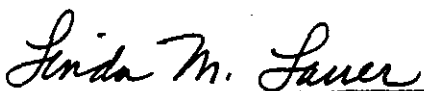
1. Under Section 59-H-8.1 of the Zoning Ordinance, the District Council is required to remand, approve, deny or dismiss any application for a map amendment within sixty days of the hearing or transmittal of the Hearing Examiner's report, whichever occurs later, unless such time is extended by the District Council.
2. The time for Council action on LMA G-862 and G-863 expires on December 17, 2007.
3. The Council granted a request for oral argument on November 6, 2007.
4. The oral argument on LMA G-862 and G-863 is scheduled for January 15, 2008.

**Action**

For this reason, the County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following resolution:

The period for Council action on Local Map Amendment No. G-862 and G-863 is extended to the close of business on January 29, 2008.

This is a correct copy of Council action.

  
\_\_\_\_\_  
Linda M. Lauer, Clerk of the Council


(A)

Action

MEMORANDUM

November 1, 2007

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Action – Request for Oral Argument on G-862 and G-863

This agenda item only asks the Council to grant or deny oral argument on local zoning map amendment G-862 and G-863. Any substantive discussion on the merits of the zoning applications will occur at a later date.

The Hearing Examiner is recommending that the Council remand G-862 and G-863 to give the applicant the opportunity:

to present additional evidence (i) concerning traffic conditions at the intersection of Randolph Road and Georgia Avenue, such as queuing and delay analysis; (ii) to show what steps the applicant is willing to take to mitigate its traffic impact, which may include but need not be limited to the at-grade improvements already proposed; and (iii) to demonstrate that the proposed mitigation would prevent adverse traffic impacts on the surrounding area from Stage 1 or the combined Stage 1 and Stage 2 of the proposed Glenmont Metrocenter.

The Council has received 8 requests for oral argument. Seven requests would support the remand; the applicant disagrees with the recommendation to remand. The requests identify the reasons why oral argument should be granted.

If the Council agrees to grant oral argument, it typically limits the scope of that argument. All requests for oral argument for G-862 and G-863 wanted to address the facts and issues raised by the Hearing Examiner's recommendation. Individual requests raised other topics for oral argument. All of these topics, list below in alphabetical order, were addressed to the satisfaction of the hearing examiner:

Air pollution  
Compatibility with the existing community  
Density  
Forestation  
Pedestrian and vehicular safety  
Retail height, location, and content  
Transit Sector Plans

If the Council grants oral argument, it also sets the time limits for that argument. Typically, the Council allows 20 minutes for opposition to the Hearing Examiner's recommendation and the same amount of time for support of the recommendation.

LERCH  
EARLY &  
BREWER  
CHARTERED

SUITE 460 | 3 BETHESDA METRO CENTER | BETHESDA, MD 20814-5367 | TEL 301.986.1300 | WWW.LERCHEARLY.COM

ATTORNEYS

October 29, 2007

***BY HAND DELIVERY***

The Honorable Marilyn Praisner, President  
Montgomery County Council  
Stella B. Werner County Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL  
2007 OCT 29 PM 3:39

**Re: Glenmont Layhill Associates, L.L.C.'s Request for Oral  
Argument Local Map Amendment Applications G-862  
and G-863**

Dear President Praisner:

Our firm represents Glenmont Layhill Associates, L.L.C., the Applicant in Local Map Amendment Applications G-862 and G-863 (the "Applications"). This letter is submitted to request oral argument in order to address the Zoning Hearing Examiner's Report and Recommendation dated October 18, 2007 (the "Report"), as it relates to the Hearing Examiner's view on the methodology for measuring traffic impact. The Hearing Examiner recommended that the Applications be *remanded* to take additional evidence on certain traffic related conditions (as discussed herein). The Hearing Examiner seems to ignore, or at best, significantly discounts, well-established rules and procedures for the evaluation of traffic conditions at the zoning stage - use of the "Critical Lane Volume" ("CLV") as the standard measurement and methodology for a Local Area Transportation Review ("LATR") study. Oral argument will establish that the Applications should be granted by the District Council (the "Council") without the need for a remand.

In the Report, the Hearing Examiner recognizes that her position is a significant change in the way the Council has evaluated zoning cases. Report at pp. 82-83. Significantly, the Hearing Examiner concludes that if the Council should choose to evaluate the Applications under the standards it has consistently followed in the past, the record contains "substantial, probative evidence that would support a decision to grant the requested rezonings" without the need for a remand. Report at 83. Use of the CLV measure has been thoroughly debated within the County and has been declared the accepted and relied upon traffic measurement in the County for zoning, subdivision, special exception and other land use matters. For the Council to deviate from this methodology now, when the LATR Guidelines specifically state otherwise, would be a fundamental departure

(3)

The Honorable Marilyn Praisner

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from the way traffic is analyzed in zoning cases and would be patently unfair to the Applicant, who followed all of the rules and accepted procedures in preparing the traffic analysis and proposed mitigation. The Hearing Examiner's suggestion to look past the accepted standards for a zoning case also could very well serve as an impediment to the County's longstanding policy to encourage the development of transit villages at our Metro nodes. By approving the Applications, the Council will reaffirm a critically important message that this type of smart growth is highly desirable in Montgomery County that must be achieved.

### **Project Background**

The property that is the subject of the Applications is 30.9 acres and is located in the Glenmont area of Montgomery County, east of Georgia Avenue, west of Layhill Road and north of Glenallan Avenue, directly across the street from the Glenmont Metro Station (the "Property"). The Applicant is an affiliate of the JBG Companies, which, through its affiliated entities, is widely recognized as an expert in building transit-oriented, mixed use projects including White Flint Crossing, Twinbrook Station, Silver Spring Gateway, and Upper Rock. Consistent with the Applicant's expertise, the Applications seek to rezone the Property from the R-T 12.5, R-30 and O-M zones to the TS-R zone. Report at p. 5. The Applications received a recommendation of approval from the M-NCPPC Transportation Planning Staff ("Technical Staff") (with input from other agencies including, but not limited to, the State Highway Administration ("SHA") and the Montgomery County Department of Public Works and Transportation) and the Planning Board voted to approve both Applications. Report at pp. 6 and 54. The Applications also are supported by the Action Committee for Transit and the Washington Smart Growth Alliance, a partnership comprised of varied interests including The Urban Land Institute, Chesapeake Bay Foundation, Greater Washington Board of Trade, and Coalition for Smarter Growth. Report at pp. 90-91.

The Applicant filed separate applications in order to respond to the staging recommendations contained in the *Sector Plan for the Glenmont Transit Impact Area and Vicinity, 1997* (the "Sector Plan"). According to the Sector Plan, Stage 1 (Application G-862) was intended to allow "immediate" development of up to 500 new dwelling units and 200 jobs. The remaining development in Stage 2 (Application G-863) would not proceed until either a grade-separated interchange or other transit or transportation improvement is provided that makes the nearby intersection of Georgia Avenue and Randolph Road function at an acceptable level.

The Honorable Marilyn Praisner

October 29, 2007

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Report at p. 3. Binding Element Number 4 on the Development Plan satisfies this latter concern. The Hearing Examiner concluded that both Applications conform to the staging and density recommendations in the Sector Plan, and otherwise meet all of the applicable rezoning requirements for approval without a remand. Report at pp. 83, 173 and 188.

### **Applicant's Position Regarding the Remand**

**1. Traffic Methodology.** In an admitted deviation from Council and Planning Board policy and procedure, the Hearing Examiner, in this case, questioned the methodology used by Technical Staff, the Planning Board and SHA for evaluating traffic impact in the County. Report at pp. 82-83. The Hearing Examiner stated, "The most important weakness of the traffic study is not, however, related to an error or a faulty assumption. It relates to the CLV methodology that LATR employs." (Emphasis added) Report at p.72. The accepted methodology, which is specifically prescribed under LATR, is an analysis of CLV as part of a LATR traffic study. Report at p. 59-60; see also, LATR Guidelines at pp. 11-15. The LATR Guidelines, at page 1, specifically state as follows:

The LATR Guidelines are also recognized as the standard to be used by applicants in the preparation of reports to the Board of Appeals and the Hearing Examiner for special exception and zoning cases brought before these bodies.

...

At the intersections identified by Transportation Planning staff, the existing, background, and site-generated traffic is to be related to the adequacy of the intersection by using the critical lane volume method. (Emphasis added).

Despite these specific references to the use of LATR in zoning cases and the overwhelming use and acceptance of LATR (and CLV methodology) in past zoning cases evaluated by the Council, the Hearing Examiner suggests that the CLV analysis as mandated by the LATR Guidelines may not accurately assess traffic conditions at this one particular intersection. The Hearing Examiner discounts the importance of the accepted methodology for the evaluation of traffic conditions at the zoning stage as well as the recommendations of the Technical Staff, the Planning Board, SHA, and the Applicant's expert transportation consultant, in

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favor of a common perception that the intersection is congested. Report at pp. 73-79. The CLV standard of 1800 CLVs in Metro Station Policy Areas ("MSPAs"), which has been adopted and reaffirmed by the Council, recognizes that congestion is greater in a MSPA; however, the standard also is predicated on the Council's longstanding policy and stated trade-off that density should be concentrated and encouraged in the MSPAs particularly on sites in close proximity to Metro. While the Applicant's analysis shows that the proposed development will increase congestion at the intersection, the analysis also concludes, based on the LATR Guidelines, that with the proposed mitigation, the intersection will operate at an acceptable level (and below the 1800 CLV standard). Report at p. 65. The Hearing Examiner has nonetheless suggested that the accepted CLV methodology should be abandoned or severely questioned in this one particular instance in favor of further (and yet undefined) evaluation, despite the fact that (i) the Applications have been deemed by all reviewing agencies and the Hearing Examiner to satisfy LATR and (ii) the Applications involve favored development located directly adjacent to a Metro Station. Report at pp. 65-66 and 83.

It is inappropriate to advance this policy matter raised by the Hearing Examiner in these local map amendment cases, especially when the Applicant has moved forward in good faith reliance on the application of LATR, has prepared a study as specifically directed (and thereafter accepted) by expert Technical Staff and prosecuted the Applications over the last several years at great effort and expense. There is an issue of fundamental fairness and predictability in the process that the Council must protect.<sup>1</sup> The Hearing Examiner, recognizing the vulnerability of this position, clearly states that "The Hearing Examiner makes this recommendation with due recognition that it represents a departure from the District Council's typical approach to traffic analysis in rezoning cases. It is also a departure from the Planning Board's policy that satisfying LATR is sufficient to demonstrate that a project will not have an adverse effect on traffic condition." Report at pp. 82-83. Again, the Hearing Examiner confirms that the Council need not follow her remand recommendation because there is substantial, probative evidence (either by following LATR or weighing the evidence differently) to grant the requested rezonings. Report at p. 83.

<sup>1</sup> The Hearing Examiner recognizes this issue as it pertains to an opponent's request to further study a different issue in the proposed rezonings. In response to the request, the Hearing Examiner asserts that, "it is unfair to deny or defer these proposed rezonings for failure to address an issue that is not typically part of a zoning case". Report at p. 102.

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October 29, 2007

Page 5

The Applicant respectfully requests that the Council elect to review these Applications as it has done consistently in the past (using LATR and the CLV analysis which has been used even in the most highly contested zoning cases) and accept the "substantial, probative evidence" in the record as referenced by the Hearing Examiner to support the granting of the Applications.

**2. Georgia Avenue/Randolph Road Interchange.** As the Council well knows, the County Executive and County Council rank the grade-separated interchange at the Georgia Avenue/Randolph Road intersection as the top priority on the transportation funding list for projects that are ready for construction funding (the list contains 14 projects). Report at pp. 53-54. While the Hearing Examiner determined from the evidence of record that "there is considerable momentum behind the grade-separated interchange, and that it is more likely to go forward than not," (Report at p. 66) she concluded that the Council could not consider the proposed mitigation because it was not fully funded for construction within four years – an LATR standard used for the preparation of traffic and transportation studies. Report at pp. 4 and 66.<sup>2</sup> Maryland law permits the Council to consider an improvement for a rezoning application if it is "reasonably probable of fruition in the foreseeable future." *Montgomery County v. Greater Colesville Citizens Association*, 70 Md. App. 374 (1987). Based on the evidence of record, *Greater Colesville* would permit the Council to factor the interchange as an improvement that is "reasonably probable of fruition in the feasible future," particularly when there are post-zoning controls in place, like the subdivision review process, to prevent premature development. Report at p. 118. Even so, the Applicant's study contains mitigation that satisfies LATR.

**3. Sector Plan.** The Sector Plan contemplates that the Stage 1 development should move forward immediately. Report at p. 3. The Council was well aware of the traffic conditions at the Georgia Avenue/Randolph Road intersection when it approved the recommendations in the Sector Plan for the Property and stressed that Stage 1 of the development should still move forward immediately to help revitalize Glenmont (deferring Stage 2 as contemplated by the

<sup>2</sup> The Hearing Examiner appears to pick and choose portions of the LATR Guidelines to apply in this matter (i.e., the use of the four year funding standard for capacity generating CIP improvements versus not wanting to recognize the CLV methodology as mandated by the LATR Guidelines). If left unchallenged, this approach could result in undermining not only longstanding application of LATR to zoning cases but also the focused effort by Technical Staff, the Planning Board and the Council to target development in MSPAs.



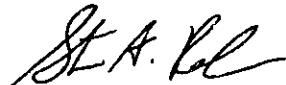
The Honorable Marilyn Praisner  
October 29, 2007  
Page 6

Binding Elements on the Development Plan). The Applications thoroughly address the Sector Plan's traffic and transportation recommendations (including mitigation) and, consequently, supports the premise that the Applications should be approved without the need for a remand.

### Conclusion

The Council's approval of the Applications is the first step in establishing a new transit village for Glenmont – a vision that has been an important priority for the County but has been difficult to achieve. Technical Staff (and the various reviewing agencies), the Planning Board, smart growth advocates and all experts that testified at the hearings expressed that the Applications are in the public interest. The Applicant has provided the Hearing Examiner with substantial, probative evidence to support a finding that the Applications should be approved by the Council without the need for a remand. The Applicant respectfully requests oral argument in support of this position. Thank you for your consideration regarding this matter.

Sincerely,



Steven A. Robins



Patrick L. O'Neil

cc: Francoise Carrier, Hearing Examiner  
Parties of Record  
Martin Klauber, Esquire  
Technical Staff, M-NCPPC

**RICHARD A. KAUFFUNGER**  
2309 EAST GATE DRIVE  
SILVER SPRING, MD 20906

October 26, 2007

Marilyn Praisner, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

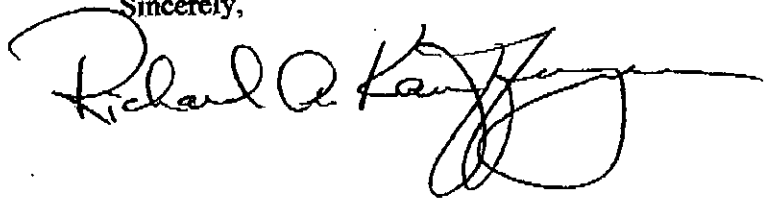
RE: Zoning Application Nos. G-862 and G-863  
Glenmont Layhill Associates, LLC applicant

Dear President Praisner:

As a party of record in the hearing on the above referenced zoning applications, I hereby request oral argument on the applications before the County Council, sitting as the District Council. I support the Hearing Examiner's recommendation and would like to expand and elucidate on the critical transportation issues that must be carefully examined in concluding that the proposed map amendments are not in the public interest and will not allow for the coordinated, comprehensive and systematic development of the County.

Thank you in advance for your careful consideration of this request. If you have any questions, I can be reached at 301-871-1369.

Sincerely,



cc. Steven A. Robins  
Patrick O'Neil

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2007 OCT 26 PM 3:53

9

Marilyn Praisner  
President, Montgomery County Council  
100 Maryland Ave.  
Rockville, Maryland 20850

October 26, 2007

Dear President Praisner,

In regard to Local Map Amendment Nos. G-862 & G-863, I strongly support the Hearing Examiner's recommendation that the matters be remanded to the Hearing Examiner to enable the Applicant to provide further evidence that their application, with all its previously stated and any newly proposed efforts, will mitigate the adverse traffic effects of their proposed development on nearby and surrounding areas.

Furthermore, on behalf of the Strathmore Bel-Pre Civic Association, I request oral argument to speak about the above recommendation and also briefly about the following issues that were not specifically mentioned in the Hearing Examiner's recommendation.

Air pollution  
Density  
Forestation  
Transit Sector Plans

Thank you for your consideration of my request.

Sincerely,



Max Bronstein  
2925 Birchtree Lane  
Silver Spring, Md. 20906  
[sumax@rcn.com](mailto:sumax@rcn.com)  
301 460 3117

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2007 OCT 26 PM 3:53

(10)

**Brogden, Karen**

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**From:** Praisner's Office, Councilmember  
**Sent:** Friday, October 26, 2007 11:19 AM  
**To:** Montgomery County Council  
**Subject:** FW: Request for oral argument: Local Map Amendments G-862 & G-863

-----Original Message-----

**From:** anneambler@comcast.net [mailto:anneambler@comcast.net]  
**Sent:** Friday, October 26, 2007 11:17 AM  
**To:** Praisner's Office, Councilmember  
**Cc:** Zyontz, Jeffrey  
**Subject:** Request for oral argument: Local Map Amendments G-862 & G-863

Dear Council President Praisner:

Re: Local Map Amendments G-862 and G-863

This is to request permission for oral argument in the above-referenced zoning application cases in support of the remand recommended by the Hearing Examiner. However, as noted in the record, I wish to argue that the anticipated increased traffic congestion is more appropriately addressed through trip reduction than through reliance on road widenings and grade separations, and that trip reduction better serves the public interest.

Respectfully yours,

Anne Ambler  
12505 Kuhl Road  
Silver Spring, MD 20902  
301-946-5599

(Summary of my written statement begins on p. 96 of the Hearing Examiner's Report)

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2007 OCT 26 PM 4: 26

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10/26/2007

**GLEN WAYE GARDENS CONDOMINIUM ASSOCIATION**

Vicki Vergagni, President

Ann Bell, Vice President

Dorothy Hunt, Secretary

Peter Burnham, Treasurer

Robert Montero, At-Large

October 26, 2007

Marilyn Praisner, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Dear Ms. Praisner:

Glen Waye Gardens Condominium (Condominium") is located catty-corner across the street from the proposed development represented by Local Map Amendment Nos. G-862 and G-863, and is one of the properties whose residents would be most immediately affected by the proposed development. The Association is a party of record in the aforementioned proceedings.

First, the Association **supports** the recommendation to **remand the aforementioned Local Map Amendments based on traffic-related issues** as expressed in the Hearing Examiner's Report dated October 18, 2007.

Further, the Association requests the **opportunity for oral argument before the District Council for further remand based on the following:**

1. Glen Waye Gardens Condominium supports the redevelopment in concept, but opposes the developer's proposal for a number of reasons that relate to its **incompatibility with the existing Glenmont community and its culture, traffic congestion, and more importantly pedestrian and vehicular safety.**
2. Glenmont is an area of modest single-family homes, townhomes, garden apartments that have been converted into condominiums, and large rental properties consisting of older garden apartments and only one high-rise apartment building. While the County Council supports a "smart growth" policy around Metro stations, this policy is more easily implemented in an undeveloped area as opposed to being "shoe-horned" into an existing community with its own culture. If "smart growth" policy is going to be implemented into an existing community, it needs to be highly sensitive to the existing community instead of simply "plopping it down" in the middle of the community as an isolated entity.
  - **The proposed development is on the highest piece of land in the immediate area. The proposed placement and height of residences would create a "fortress" appearance and tower over existing homes. The Association supports shorter structures (no higher than 55' above the low point of the property) facing onto Layhill Road and Glenallan Avenue, with the higher structures positioned on the lower sections of land toward the rear of the property being developed.**
  - **The proposed development is too dense. Current population density for Glenmont is 4,389 people per square mile; the proposed development encourages residency at 78,800 people per square mile. Assuming 2.6 persons per household according to the 2005 U.S. Census, the Association would support the development of 20% fewer residences.**

2302 GREENERY LANE #101, SILVER SPRING, MARYLAND 20906  
TELEPHONE: (301) 949-8219 FAX: (301) 949-3068 E-MAIL: GLENWAYE2@AOL.COM

Marilyn Praisner  
Page Two  
October 26, 2007

- **The price of the proposed housing would significantly exceed the price of nearby homes of similar size by 50 - 100%. (Similarly-sized homes on Glenallan Avenue across from the proposed development currently sell for \$200K - \$300K; the residences in the proposed development would sell for approximately \$300K - \$600K.)** [REDACTED]

[REDACTED] The Association would support less expensive housing.

4. Glenmont has retail establishments that include "anchors" (e.g., Shoppers Food Warehouse and Staples), banking institutions, national fast-food chain restaurants, and "mom-and-pop" retailers.
  - The Association recommends the "supplementation" of existing retailers with non-competitive entities whose products and services will be of interest to the existing community.
  - The height and location of proposed retail space would create a "cavern" appearance. Its proposed location immediately fronts on roadways that already are dangerous to pedestrians (e.g., width of roadways with turning lanes) and vehicular traffic (e.g., curve on Glenallan Avenue), and would bring additional traffic to already-congested roadways. The Association recommends that only housing face the public roads and that retail activity be limited to the rear of the property to encourage the use of the development's main "internal" road.
5. Glenmont already has a high-traffic Metro station with one multi-level parking lot that is about to be supplemented by another multi-level parking lot [REDACTED]
6. Traffic queuing and delays currently are problems for Glenmont at Randolph Road and Georgia Avenue, as well as four other major intersections within ¼ mile of the proposed development. Significant mitigation is required to avoid further aggravation of congestion from newcomers.
7. Pedestrian and vehicular safety is of enormous concern. Evidence in the form of accident information exists that was not available for presentation at the time of the hearing. That information can be made secured from the Montgomery County Police Department and the Maryland State Highway Administration.

Thank you for considering our request to present an oral argument before the District Council.

Sincerely,

  
Vicki Vergagni, President  
Board of Directors

LU d ZONING

J2

12407 Flack Street  
Silver Spring, MD 20906  
October 25, 2007

Council President Praisner  
Council Office Building  
100 Maryland Avenue  
Rockville, MD 20850

Dear Council President Praisner:

Re: Local Map Amendments G 862, G863

I support oral argument in the above mentioned cases for the opportunity it provides to support the Hearing Examiner's request for remand.

I request permission to participate in the oral arguments in these cases.

Sincerely,

*Michael McAteer*

Michael McAteer

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OCT 29 2007

OFFICE OF ZONING AND  
ADMINISTRATIVE HEARINGS

2007 OCT 26 AM 8:27

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Glenmont BP  
12301 Georgia Ave  
Silver Spring, MD 20906

Council President Praisner  
Council Office Building  
100 Maryland Avenue  
Rockville, MD 20850

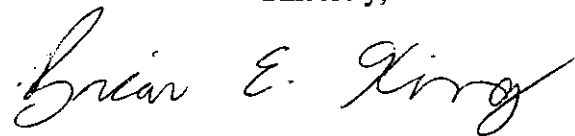
Dear Council President Praisner:

Re: Local Map Amendments G 862,G863

I support oral argument in the above mentioned cases for the opportunity it provides to support the Hearing Examiners request for remand.

I request permission to participate in the oral arguments in these cases.

Sincerely,



Brian E. King

**RECEIVED**

OCT 29 2007

OFFICE OF ZONING AND  
ADMINISTRATIVE HEARINGS

2007 OCT 26 AM 10:15

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

15





## LAYHILL SOUTH CITIZENS ASSOCIATION

October 29, 2007

The Hon. Marilyn Praisner, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Glenmont Layhill Associates, LLC, Zoning Application Nos. G-862 and G-863  
Dear Ms. Praisner:

I write as a party of record in the above proceeding and am president of the Layhill South Citizens Association, the single family development of about 270 homes just to the north and east of the subject development off Layhill Road at Briggs Road.

I and our Civic Association support the recommendation of the Hearing Examiner, Francoise M. Carrier, to remand these two rezoning cases back to the Hearing Examiner to give the Applicant the opportunity to present additional evidence as outlined by Ms. Carrier on page 82 of the Report; i.e:

- (1) Concerning traffic conditions at the intersection of Randolph Road and Georgia Avenue, such as queuing and delay analysis;
- (2) to show what steps the Applicant is willing to take to mitigate its traffic impacts, which may include but need not be limited to the at-grade improvements already proposed; and
- (3) to demonstrate that the proposed mitigation would prevent adverse traffic impacts on the surrounding area from Stage 1 and Stage 2 of the proposed Glenmont Metrocenter.

I respectfully request that these cases be remanded back to the Hearing Examiner, and that oral argument be held. Our Association is concerned about the traffic impacts of the Glenmont Metrocenter development, especially in view of the agreement reached by the developers of the Indian Spring Country Club property that at grade mitigation of problems at Rt. 97 and Randolph Road not occur until 90% buildout.

Thank you for your consideration of this request.

Sincerely yours,

*Susan L. Johnson*  
Susan L. Johnson

cc: Steven A. Robins, Esq.

*Susan L. Johnson, President*  
12800 Teaberry Road  
Silver Spring, Maryland 20906  
Phone: (301) 949-2158  
e-mail: [mighty@erols.com](mailto:mighty@erols.com)

(16)



RECEIVED  
MONTGOMERY COUNTY  
COUNCIL  
2007 OCT 29 PM 12:23

Agenda Items No. 13  
Resolution No. \_\_\_\_\_  
Introduced: January 15, 2008  
Adopted: \_\_\_\_\_

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY

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By: County Council

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Subject: APPLICATION NOS. G-862-863 FOR AMENDMENT TO THE ZONING ORDINANCE  
MAP, Steven A. Robins and Patrick L. O'Neil, Esquire, Attorneys for Applicant Glenmont  
Layhill Associates, LLC, OPINION AND RESOLUTION ON APPLICATION

Tax Account numbers are listed in attached Appendix 1.

**OPINION**

Local Map Amendment Application No. G-862, filed on November 29, 2006 by Applicant Glenmont Layhill, LLC, requests reclassification from the R-T 12.5, R-30 and O-M Zones to the TS-R Zone of 23.9 acres of land located at the intersection of Georgia Avenue and Glenallan Avenue in Silver Spring, Maryland, in the 13<sup>th</sup> Election District. The tract covered by Application No. G-862 consists of Lots 1 through 49 and Parcels A, B and C in the Glenmont Mews Subdivision, zoned R-T 12.5; parts of Parcels A, B and G in the Glenmont Park Subdivision, zoned R-30; Parcels C and F in the Glenmont Park Subdivision, zoned R-30; and Parcel E in the Glenmont Park Subdivision, zoned O-M.

Application No. G-863, filed on the same date by the same applicant, requests reclassification from the R-30 Zone to the TS-R Zone of 7.0514 acres of land adjacent to the land covered by Application No. G-862. The land covered by Application No. G-863 consists of parts of Parcels A, B and G in the Glenmont Park Subdivision, zoned R-30.

The Applicant seeks to develop the combined properties, a total of 30.9 acres referred to herein as the "subject site" or "subject property," as a single development. Two separate applications were filed to respond to phasing recommendations that were specified in the applicable sector plan. The two applications separate the subject property into a Stage 1 area (LMA No. G-862) and a Stage 2

area (LMA No. G-863). At the Applicant's request, the two cases were consolidated for purposes of the public hearing and the Hearing Examiner's Report and Recommendation.

The Hearing Examiner concluded that most of the findings required in the Zoning Ordinance to support approval of the requested rezonings and the submitted Development Plan can be made affirmatively, including substantial compliance with the use and density recommended by the *Sector Plan for the Glenmont Transit Impact Area and Vicinity, Approved and Adopted September 1997* (the "Sector Plan"), and compliance with the purposes, standards and regulations of the TS-R Zone. The Hearing Examiner found, however, that the evidence was not sufficient to demonstrate that the proposed development would not have an adverse impact on local traffic conditions. This rendered the proposed development incompatible with the surrounding area. The Hearing Examiner also found, however, that with an opportunity to provide additional evidence, the Applicant might be able to meet its burden of demonstrating that the development would not have adverse traffic impacts, allowing approval of a development that is otherwise consistent with county policies and in the public interest. Accordingly, the Hearing Examiner recommended that the subject applications be remanded to her to provide the Applicant with the opportunity to present additional evidence (i) concerning traffic conditions at the intersection of Randolph Road and Georgia Avenue, such as a queuing and delay analysis; (ii) to show what steps the Applicant is willing to take to mitigate its traffic impacts, which may include but need not be limited to the at-grade improvements already proposed; and (iii) to demonstrate that the proposed mitigation would prevent adverse traffic impacts on the surrounding area from Stage 1 or the combined Stage 1 and Stage 2 of the proposed Glenmont Metrocenter.

The Montgomery County Planning Board (the "Planning Board") and its Technical Staff recommended **approval** of the applications on grounds that the proposed development would be in harmony with the recommendations of the Sector Plan, would be compatible with surrounding development and would be in the public interest. The District Council agrees with the conclusions drawn by the Hearing Examiner, as discussed below. The Hearing Examiner's Report and Recommendation dated October 18, 2007 is incorporated herein by reference.

### **A. Subject Property**

The subject property contains a total of approximately 30.9 acres of land located across the street from the Glenmont Metro Station, north of Glenallan Avenue between Layhill Road and Georgia Avenue. The site is slightly north of Georgia Avenue's junction with Layhill Road and its intersection with Randolph Road.

With the exception of a half-acre area that was under separate ownership, the subject property was developed as a single site during the 1960s, for multi-family use. There are currently approximately 352 dwelling units on the site, distributed in about 18 two-and-a-half-story buildings, although many units are unoccupied. The buildings are spread out on the site, with parking lots, roads, grass and, particularly in the western half of the site, trees interspersed among them. The site also has playgrounds, paved roads and a pool, and virtually the entire site is fenced. The apartments have aged, and the evidence suggests that they are in need of replacement or significant renovation. The evidence also suggests that all of the units can be considered affordable under Montgomery County affordability guidelines.

The subject property is irregularly shaped. The high point topographically is in the southeast corner of the site, at the intersection of Glenallan Avenue and Layhill Road. From that point the site slopes down to the west and northwest, reaching its low point where a stream fragment runs through the northwest corner of the site. The only forested areas on the site are in the vicinity of the stream. The vast majority of the site is within a five minute walk of the Glenmont Metro Station, and the entire site is within a ten minute walk.

The subject site carries three separate zoning classifications. Most of the site is classified under the R-30 Zone (multi-family residential). A 4.3-acre portion in the northeast corner is classified under the R-T 12.5 Zone, having been rezoned for 49 townhouses (the townhouse site plan was not implemented and has expired). A very small, half-acre portion of the subject site in the southeast corner, at the intersection of Glenallan Avenue and Layhill Road, is classified under the O-M Zone. It is the location of a former bank building, now unoccupied.

### **B. Surrounding Area and Zoning History**

The surrounding area for this application consists of the area identified as the Glenmont Village Center in the Sector Plan, which focuses on the area around the Glenmont Metro Station and the intersection of Georgia Avenue and Randolph Road. The surrounding area contains a mix of uses and zones. The subject site is bordered to the north and northwest by property owned by the Washington Metropolitan Transit Authority ("WMATA"), and on all other sides by busy roadways. To the northwest is the terminus of the Metro system's Red Line, on land classified under the R-T 12.5 Zone, and to the north is a Metro maintenance/storage yard in the R-90 Zone. To the east, across Layhill Road, the subject property confronts the Winexburg apartment complex in the R-20 Zone, which has over 600 dwellings on 33 acres, mostly in three-story buildings. South of the Winexburg complex, across Glenallan Avenue and diagonally confronting the subject site to the southeast, is Glen Waye Gardens, a condominium complex in the R-30 Zone with 214 units in three-story, multi-family buildings on 15 acres of land.

South of the subject site, across Glenallan Avenue, is the Glenmont Metro Station, including an 1,800-space parking garage and a Kiss and Ride area. The southeast corner of Glenallen Avenue and Georgia Avenue is occupied by a Baptist church, and south of the church are the Metro entrance and a bus loading area. South of the Metro garage, in the northwest corner of the Georgia Avenue/Layhill Road intersection, is an area classified under the RMX-2C Zone, occupied by a small commercial building and a gas station.

Beyond the adjoining and confronting properties, the surrounding area contains large single-family neighborhoods in the R-60 and R-90 zones; townhouses, apartment buildings and a church on Georgia Avenue; a narrow strip of park land on the west side of Georgia Avenue known as the Glenmont Greenway; and the Glenmont Shopping Center, an older shopping center that many people feel is outdated.

The subject property was classified under the R-90 Zone when the zone was enacted and mapped in the 1954 Regional District Zoning. The 1958 County-wide Comprehensive Zoning confirmed

the R-90 zoning of the site. Between 1963 and 1984 the District Council granted reclassifications of various portions of the site, resulting in the current zoning scheme. The 1978 Sectional Map Amendment for the Glenmont Transit Area retained the R-90 and O-M zoning existing at that time.

### **C. Proposed Development**

The Applicant proposes to create a mixed-use neighborhood with up to 1,550 dwelling units and 90,000 square feet of retail. The dwelling units would be made up of townhouses, low-rise and mid-rise multi-family buildings, multi-family dwellings over retail, and possible live/work units, with a maximum of 250 townhouses and the remainder in multi-family housing. The overall residential density proposed for the site is 50.1 dwelling units per acre, including a 19.3 percent MPDU bonus. This is just under the maximum residential density recommended in the Sector Plan.

Stage 1 of the project would include up to 500 new dwelling units, the replacement of up to 275 existing dwelling units, and approximately 4,000 square feet of retail space. Stage 2 would consist of up to 698 new units, the replacement of up to 77 remaining older units, and additional retail up to a total of 90,000 square feet.

Pursuant to Code § 59-D-1.11, development under the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. This development plan must contain several elements, including a land use plan showing site access, the general build and height of proposed buildings and structures and their relationship to one another and to adjacent areas, gross floor area of buildings by type of use, floor area ratio ("FAR") of buildings, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. As a general matter, the development plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The site plan approved by the Planning Board later in the process must conform to all non-illustrative elements of the development plan approved by the District Council. See Code § 59-D-1.2. The Zoning Ordinance specifies that in the TS-R Zone, building height is to be

determined not at the zoning stage, but during site plan review. Code § 59-C-8.51. A maximum height may be established on the development plan, but exact building heights cannot be set at this stage.

The Development Plan in this case divides the site into development blocks that identify the general location and size of buildings while leaving exact building footprints to be developed during site plan review. A binding "Development Block Analysis" table specifies the range of uses, building heights and densities permitted in each block. Some blocks may have multi-family, retail and/or commercial uses, some only multi-family uses and some only townhouses. Two blocks are listed for multi-family or townhouse use, leaving for site plan the resolution of a dispute between the Applicant and Technical Staff concerning whether the corner of Layhill Road and Glenallen Avenue should have townhouses, to ensure lower building heights at the topographical high point of the site, or multi-family uses, so the site's entire Glenallen Avenue frontage will have multi-family buildings. Each block also has a binding height range. The maximum height is 50 feet along most of the Layhill Road frontage, 65 feet at the corner of Layhill Road and Glenallen Avenue, and 85 feet throughout the rest of the site.

The Development Plan has nine Textual Binding elements, as summarized below:

1. The Development Block Analysis identifies use types, density range, height range and approximate setbacks from curb to face of building.
2. The total number of units shall not exceed 1,550 dwellings. MPDUs will equal 12.5 percent of total units in Stage 1, and up to 14.5 percent of the entire development if Stage 2 goes forward. Total number of residential units and amount of retail/commercial space will be determined at site plan. Units may be shifted between development blocks so long as the range within each block does not vary by more than ten percent, and the total number of units does not exceed 1,550. Total retail/commercial shall not exceed 90,000 square feet and will be within the range shown on the Development Block Analysis.
3. The Applicant shall submit a revised Local Area Transportation Review at time of preliminary plan approval, re-evaluating Stage 2 so that the Planning Board can determine whether the

intersection of Georgia Avenue and Randolph Road will function at an acceptable level of service to permit all or a portion of Stage 2 to move forward.

4. No building permit applications for Stage 2 will be applied for "until either a grade separated interchange is fully funded for construction or other transit or transportation improvements are under construction that would make the intersection of Randolph Road and Georgia Avenue function at an acceptable level as determined by the Montgomery County Planning Board." Ex. 144(a). The Applicant may incorporate the following mitigation measures as part of the subdivision application: physical roadway improvements, pro rata payments toward the programmed Georgia Avenue/Randolph Road interchange, Local Area Transportation Review ("LATR") mitigation measures (e.g., real-time transit signs, pedestrian count-down signals, bike racks, etc.), transit enhancement incentives, a neighborhood circulator shuttle, pedestrian safety improvements and/or other improvements.

5. No building shall exceed seven stories or 85 feet, as measured pursuant to the Zoning Ordinance.

6. All private roads shall meet the Montgomery County standards required for emergency vehicle access.

7. No structures or impervious surfaces shall be located within the Environmental Buffer.

8. The Sector Plan recommends a maximum base density for the entire property of 42 units per acre, which results in a maximum density of 51 units per acre with MPDUs. As shown, Stage 1 reflects a maximum density of 32.45 units per acre with MPDUs, and Stage 2 reflects a maximum density of 119.4 units per acre with MPDUs. Collectively, the maximum density for the entire project is 50.1 units per acre with MPDUs.

9. Subject to Textual Binding Element No. 4, the completion of any portion of the project is not necessary to commence any subsequent portion of the project.



The Development Plan also contains Binding Design Principles that are intended to demonstrate the Applicant's commitment to carrying out the Sector Plan's vision for this property. These principles are summarized below:

1. Pedestrian Oriented Streets. Continuous and interconnected streets, creating blocks that encourage walkability; parking on streets where practical, in parallel parking spaces, and in parking decks, parking garages and driveways; neighborhood streets radiating from the new Neighborhood Main Street to provide safe access to Metro; and minimum five foot sidewalks on all streets, plus street trees between sidewalk and curb.

2. Public Open Space Elements. Major central public use space in center of site with variety of seating opportunities, passive recreation opportunities, multi-use lawn area and focal design element; naturalized park edge along street valley buffer; major public use space between townhouses and multi-family; minor open spaces throughout the project; open spaces incorporating on-grade rain water bio-filtration strategies to the extent practical.

3. Architectural Elements. Building front entrances shall front onto the streets; special architectural treatments at the terminus of vistas or deflected views along a street; garage access for townhouse units to be primarily rear-loaded and served by alleys.

#### **D. Master Plan**

Pages 36 through 58 of the Hearing Examiner's Report and Recommendation contain a detailed discussion of the Sector Plan.

The Sector Plan's vision for Glenmont is a transit-oriented area with a compact, mixed-use center concentrated around the new Metro station, and the existing single-family neighborhoods preserved and protected. Planning Goals include preserving Glenmont as a stable, primarily residential community; focusing development near the Metro station; providing a "Center" for Glenmont to serve as a focal point and gathering place for the community; ensuring that new development is compatible with the existing community; providing attractive, safe and convenient linkages to major destinations

including the Metro station and proposed Glenmont Center (of which the subject site is a part); encouraging transit use; and protecting environmentally sensitive areas.

The Sector Plan described Glenmont as standing at a crossroads. The opening of the Metro station and the presence of several redevelopable parcels nearby led to the opportunity to create a viable center for the larger community, and help rejuvenate all of Glenmont.

The Sector Plan's specific recommendation for the subject site (not including the half-acre bank site, which was under separate ownership at the time) was redevelopment under the TS-R Zone to accommodate a variety of residential uses and housing types and some convenience retail. The recommended base density under the TS-R option was 42 dwelling units per acre, which results in a maximum of 51 units per acre with an MPDU bonus. This represented a significantly higher density than the maximum permitted on the site at the time, which was 14.5 units per acre. The Sector Plan stated that a new development on the subject property should be an extension of the Glenmont Center, rather than a neighborhood separated from the rest of Glenmont. To this end, the plan recommends a new street on the site, parallel to Glenallen Avenue, to serve as a neighborhood main street. The plan recommended low-rise housing, as well as high-rise housing up to ten stories. The Applicant proposes low-rise and mid-rise housing, having agreed, in response to community concerns, not to build any high-rises. The plan calls for tree-lined streets, street-oriented buildings with ground level commercial, direct connections to the Metro station, a central open space, and interconnected internal streets.

The Hearing Examiner, the Planning Board, Technical Staff and all hearing participants agree that the proposed development would substantially comply with the specific goals for the subject site and the Sector Plan's more general planning goals. It would create a transit-oriented, pedestrian-friendly, high-density mixed-use community in close proximity to the Glenmont Metro Station, as envisioned in the Sector Plan, within the maximum density proposed in the Sector Plan and in keeping with most of the specific site recommendations. It would provide gathering places for Glenmont residences in its public open spaces and retail spaces. It would have an interconnected, pedestrian-friendly street network to encourage walking and transit use. It would contribute streetscaping and

street activation to Georgia Avenue. It would have at least the potential to benefit the health of the stream fragment that runs through the site and onto Metro property, contributing to the health of the watershed.

Almost all of the subject site was specifically recommended for mixed-use, high-density development under the TS-R Zone. The half-acre area currently zoned O-M was not recommended for a change in zoning or use, probably because it was separately owned, was occupied by a going concern and was not expected to be available for redevelopment. However, the drafters of the Sector Plan had the foresight to include the O-M portion of the site in the area they called the "Glenmont Center," which was later designated as a transit station development area. Redevelopment as part of the proposed mixed-use, transit-oriented development is consistent with that designation. Moreover, a finding of "substantial" compliance with the Sector Plan leaves room to exercise judgment in finding that including this small, but visually prominent parcel in the larger redevelopment would help implement the Sector Plan's vision and intent more fully.

Some members of the community do not like the Sector Plan's vision and do not want rejuvenation in Glenmont – they like their community the way it is, and do not want higher density, more expensive housing. The recommendations for revitalization in Glenmont, intended to take full advantage of the Metro station, represent a policy decision that the County Council and the Planning Board made when the Sector Plan was adopted. The Planning Board reaffirmed this decision in recommending approval of the present applications, and the District Council does so as well.

The site-specific recommendations state that TS-R zoning should not be granted until appropriate staging triggers are met, requiring a separate TS-R application for each stage of development. This recommendation resulted in the two applications before the District Council today. The Sector Plan recommended that Stage 1 allow up to 500 new units and 200 new jobs to proceed immediately, with all other new development delayed "until either a grade separated interchange or other transit or transportation improvement is provided that makes the intersection of Randolph Road and Georgia Avenue function at an acceptable level." Sector Plan at 82. The Sector Plan specifically

stated that "no local map amendment or optional method application beyond those necessary for Stage 1 should be approved until the conditions necessary for Stage 2 are realized." *Id.* The Sector Plan anticipated that during each stage, the County Council would determine the amount of development to be accommodated each year through the Annual Growth Policy.

Plans have been underway for some time to construct a grade-separated interchange at Georgia Avenue and Randolph Road, to alleviate what is indisputably a very high level of congestion. This interchange is the County's top priority for projects that will be ready for construction funding in the next six years and are currently in the design or planning stages. It has not, however, been funded for construction at this point.

The Applicant has endeavored to satisfy the Sector Plan's staging recommendations in two ways. First, it has divided the site into two areas, Stage 1 and Stage 2, and proposed to build a maximum of 500 new units and 4,000 square feet of retail in Stage 1 (4,000 square feet of retail would generate about ten jobs, far fewer than the 200 jobs the Sector Plan would permit). The remaining density is reserved for Stage 2. Second, the Applicant has committed to a binding element that resolves the ambiguity inherent in the language of the Sector Plan. This binding element places the onus on the Applicant to refrain from submitting any building permit applications for Stage 2 until either (i) a grade-separated interchange is fully funded for construction; or (ii) transportation or transit improvements that the Planning Board finds make the intersection of Randolph Road and Georgia Avenue function at an acceptable level are under construction. The Applicant has structured this binding element to provide a very strong assurance that Stage 2 will not be built unless improvements that will fix the intersection are underway. The binding element leaves open considerable flexibility regarding what kind of improvements can be considered acceptable, giving the Planning Board the necessary discretion to approve physical roadway improvements, pro rata payments toward the proposed interchange, transit improvements (a favorite of some community members, who would prefer to have a Georgia Avenue busway instead of a grade-separated interchange) and traffic mitigation measures such as pedestrian count-down signals, bike racks or a neighborhood shuttle.

### **E. Public Facilities**

The Hearing Examiner's Report and Recommendation contains a detailed discussion of potential impacts on public facilities, on pages 58 through 85.

The Applicant's traffic study for Stage 1 of the project found that all nine of the intersections studied currently operate below the applicable Critical Lane Volume ("CLV") standard of 1,800. It found that all nine intersections would continue to operate below the CLV standard with background traffic and with the proposed development, except for the intersection of Randolph Road and Georgia Avenue, where CLV would be just over 1,800 with background traffic, and would exceed 1,800 by a fairly small margin with the addition of the proposed development. The Stage 2 traffic study covered 17 intersections, and concluded that all of them currently operate with the 1,800-CLV congestion standard. The study found that with background traffic, all of the intersections would operate within the congestion standard except Georgia Avenue and Randolph Road, which would slightly exceed the congestion standard. With construction of the combined Stage 1 and Stage 2 of the proposed development, all intersections would still operate below the congestion standard except Georgia Avenue and Randolph Road, which would have CLVs substantially above the congestion standard in the peak hours of both the morning and the afternoon peak periods.

The Applicant proposed two at-grade improvements to Georgia Avenue to mitigate its traffic impacts. These improvements were recommended in the Sector Plan as short-term improvements to Georgia Avenue/Randolph Road, and were approved as traffic mitigation in the Planning Board's recent approval of a 773-unit subdivision known as Indian Springs. The two improvements are:

1. Adding a fourth through/right turn lane on the southbound approach of Georgia Avenue to Randolph Road; and
2. Adding an exclusive right turn lane from northbound Georgia Avenue to eastbound Randolph Road.

With these additional lanes, CLV analysis indicates that the intersection of Georgia Avenue and Randolph Road would operate below the congestion standard and, therefore, would satisfy

LATR. The traffic study states that in lieu of the at-grade improvements the Applicant could, at the time of subdivision, make a pro-rata contribution to funding the grade-separated interchange at Georgia Avenue and Randolph Road that has been planned and designed by the SHA. The Applicant is not permitted to rely on the grade-separated interchange for purposes of LATR, however, because the interchange is not fully funded for construction.

The District Council can only consider traffic mitigation measures that are reasonably probable of fruition in the foreseeable future. *See Montgomery County v. Greater Colesville Citizens Association*, 70 Md.App. 374 (1987). The record in this case suggests strongly that there is considerable momentum behind the grade-separated interchange, and that it is more likely to go forward than not. However, it is a major roadway project that may yet face hurdles before funding is in place. Moreover, the record suggests a risk that if the Indian Springs subdivision moves forward more quickly than the funding for the interchange, the developer in that case may build the at-grade improvements, which may decrease the momentum for a grade-separated interchange. The SHA has stated that it does not envision building the at-grade improvements, then ripping them out to build a grade-separated interchange. *See Ex. 75*. In addition, no specific analysis has been provided in this record to demonstrate that the grade-separated interchange would result in the intersection operating at an acceptable level of congestion. Most importantly, given that LATR specifically prohibits an applicant from relying on a government sponsored improvement that has not been fully funded for construction within four years, the Hearing Examiner considers it inconsistent with county policy and therefore inappropriate for the Council to rely on an unfunded improvement in a rezoning case.

Community member Richard Kauffunger introduced considerable testimony and other evidence to support an argument that the proposed at-grade improvements should not be accepted as mitigation because they are not feasible, due to right-of-way and parkland impacts. The District Council agrees with the Hearing Examiner's conclusion that Mr. Kauffunger's efforts in this regard were unsuccessful. The preponderance of the evidence establishes that the right-of-way needed for the at-grade improvements is similar to what would be needed for the grade-separated interchange, and that

with the State and the County behind the plan to improve traffic conditions at Georgia Avenue and Randolph Road, they are likely to use their governmental authority to obtain right-of-way if necessary.

The Applicant reported that during its consideration of these applications, the Planning Board expressed a strong interest in pedestrian and transit-related amenities, such as sidewalks, bike paths, pedestrian countdown signals, bus shelters and real-time transit information signs. LATR permits an applicant to obtain "trip credits" for such amenities, which reduce the number of trips a project is deemed to generate. The Applicant's traffic expert testified that if the Applicant can obtain the maximum 120 trip credits for providing such amenities, it will be able to build approximately 220 townhouses, 300 multi-family units, or some combination of the two, without making any roadway improvements. It could also get permission to build an additional 35 units, without making roadway improvements, in exchange for operating a neighborhood circulator shuttle to bring area residents to the Metro station. These transit-oriented improvements could allow the Applicant to build between 255 and 335 units, plus the 250 replacement units in Phase 1 (replacement units are not considered to increase traffic), while waiting for the grade-separated interchange at Georgia Avenue and Randolph Road to be funded. No evidence was presented, however, as to how much the CLV at the intersection of Randolph Road and Georgia Avenue would increase due to the trips that the 255 to 335 new units would generate, or whether the non-roadway improvements would reduce congestion at that intersection in a way that would partially or fully offset the impact of the new trips.

The evidence points to several flaws in the Applicant's traffic study, including an inadequate explanation for a drop-off in trips on Layhill Road before reaching Georgia Avenue; the use of an average of four traffic counts taken at Randolph Road and Georgia Avenue, rather than the highest available counts; and scant information on whether merging a new southbound lane on Georgia Avenue into the three existing lanes south of Randolph Road would create new delays.

The most important weakness of the traffic study is not, however, related to an error or a faulty assumption. It relates to the CLV methodology that LATR employs. The Applicant's traffic expert, Craig Hedberg, testified on cross-examination that CLV analysis only measures conflicting

movements that go through an intersection. If there is something preventing the flow of traffic through an intersection, such as an accident, the CLV count will be relatively low because cars are not moving. Mr. Hedberg acknowledged that an intersection with heavy congestion may not have a high CLV because the congestion limits the number of vehicles that can get through. He argued that an intersection with that much congestion will normally exceed the congestion standard when background traffic is added in, because the background traffic is just numbers added to the traffic counts – background traffic cannot be blocked by conditions on the ground. Mr. Hedberg also observed that when intersections are closely spaced, there may be back-ups between them if the signal timing is not well-coordinated.

Mr. Kauffunger described conversations he had with two transportation professionals at the University of Maryland and two SHA officials, all of whom agreed, with varying degrees of vehemence, that the CLV technique has serious limitations, particularly when used at an intersection that is already congested. Although this was hearsay testimony, it is entitled to some credence because it is consistent with Mr. Hedberg's testimony and because hearsay may be admitted in administrative proceedings if it appears to be reliable and probative. See Code §2A-8(e).

More persuasive than the theoretical discussion of the limitations of CLV as a technique is the overwhelming evidence that the intersection of Georgia Avenue and Randolph Road is seriously congested, with lengthy back-ups common during the peak hours. Mr. Hedberg testified that in his two or three peak-hour visits to the intersection, the worst back-up he saw on Georgia Avenue was approaching the Layhill Road intersection, which he estimated to be a distance of about 800 feet. See Tr. July 24 at 82-84. Community member Vicki Vergagni testified that it is not unusual for through traffic on Georgia Avenue back up from Randolph Road past the intersection with Layhill Road and even past the intersection with Glenallan Avenue. See Tr. July 24 at 151. She added that it may take three or four lights to turn left from Georgia Avenue to Layhill, and it is often impossible to turn left from Layhill onto Georgia Avenue because traffic on Georgia is not moving, and there is no where to go. Community member Susan Lois Johnson described the intersection of Georgia Avenue and Randolph



Road as "failing." See Tr. June 29 at 204; Ex. 97. Community members Ann Ambler, Max Bronstein and Michael McAteer complained that the intersection of Randolph Road and Georgia Avenue is heavily congested during peak hours. Mr. Kauffunger testified that lengthy back-ups at this intersection are common during the peak hours.

Mr. Kauffunger submitted several photographs of vehicles waiting to go through the intersection of Georgia Avenue and Randolph Road, which demonstrate persuasively the serious level of congestion at that intersection and its impacts on other nearby intersections and roadways (see Hearing Examiner's report at 74-80). He also stated that studies he and a fellow community member conducted show that during the afternoon peak period, it can take between 8 ½ and 9 ¾ minutes to get from the point on Layhill Road where the congestion starts, usually somewhere between Glenallan Avenue and the Metro rail yard, through the Georgia Avenue intersection. The distance is about four tenths of a mile, which Mr. Kauffunger calculates to be the equivalent of about three miles per hour. His studies also show that on westbound Randolph Road during the afternoon peak; it takes 7 ½ to 8 minutes to go from Tivoli Lakes Boulevard to Georgia Avenue, a distance that the Hearing Examiner estimated at about one mile.

The Applicant did not attempt to refute the testimony and photographic evidence of lengthy back-ups on Glenmont roads caused by congestion at the intersection of Randolph Road and Georgia Avenue, nor did the Applicant attempt to refute the evidence that CLV is a poor technique to measure whether a congested intersection is operating at an acceptable level. The Applicant considers evidence about the limitations of CLV analysis irrelevant to these proceedings, because CLV is the technique prescribed in the LATR Guidelines. The Applicant has chosen to stand on the argument that it satisfied LATR and nothing more is required.

The District Council is persuaded that in these cases, CLV analysis failed to adequately assess traffic conditions at Georgia Avenue and Randolph Road. Even assuming that its flaws are not enough to undercut its findings, the LATR study concluded that the intersection of Georgia Avenue and Randolph Road operates at an acceptable level currently, and would continue to do so with the

proposed development and associated at-grade improvements to Georgia Avenue. Yet, testimony from Mr. Hedberg and community members, supported by Mr. Kauffunger's photographs and unrefuted by any contrary evidence, establishes that under current conditions the intersection is heavily congested, and is not operating in a manner that any reasonable person would consider acceptable.

Starting from the premise that the intersection is working properly, the traffic study goes on to calculate that although background traffic and Stage 1 of the proposed development would cause the intersection to exceed the congestion standard slightly, and Stage 2 would cause the intersection to exceed the congestion standard by a much larger margin, the proposed at-grade improvements would bring the intersection significantly below the congestion standard with Stage 1, and slightly below it with Stage 2. All of these conclusions are based on the faulty premise that the intersection is operating at an acceptable level under current conditions, a premise that is undercut by the unrefuted evidence of serious congestion.

In addition to the evidence related to the traffic study itself, the District Council is concerned by the lack of evidence about conditions at the intersection of Randolph Road and Georgia Avenue if the Applicant is able to build between 255 and 335 new units, as well as the 275 replacement units, based on non-roadway improvements. Such improvements are important, and would undoubtedly be beneficial to pedestrians and transit users – indeed, some of the community members who participated in the hearing would prefer transit improvements to roadway improvements – but the question of whether the net result for the community would be a benefit or an adverse impact has not been explored. It may be that non-roadway improvements would draw people out of their cars and onto transit, taking enough trips off the roads to offset the traffic impact of the new units, but the Applicant did not submit any evidence to that effect.

The District Council finds that the Applicant has not met its burden of demonstrating compatibility with regard to traffic impacts for either Stage 1 or Stage 2.

In addition to roads, a public facilities analysis should also consider utilities and schools. Undisputed testimony indicates that all necessary public utilities would be available and adequate for the proposed development.

The proposed development is expected to generate approximately 103 elementary school students, 75 middle school students and 79 high school students. Montgomery County Public Schools ("MCPS") reports that although school capacity is adequate at the middle and high school levels, enrollment exceeds capacity at the two relevant elementary schools and is projected to exceed capacity in the future. However, Bruce Crispell, MCPS's Director of Long-range Planning, stated in an email to Applicant's counsel that while the County's current Capital Improvement Program does not address overcrowding at the relevant elementary schools, he is "confident that the upcoming capital improvements program (FY 2009-2014) will identify a facility plan that will eliminate the elementary school overutilization at [the two schools] in the coming six-year planning period." See Ex. 110. He added that addressing the elementary school space deficits in the Kennedy Cluster is a high priority for MCPS capital programming.

The Planning Board is required under the County's Growth Policy to determine, for each fiscal year, whether each school cluster has adequate capacity under the Growth Policy test to permit approval of additional subdivisions. The results of the Planning Board's school capacity evaluation for Fiscal Year 2008 indicate that using the current Growth Policy test, all school clusters have sufficient capacity to approve additional subdivisions in FY 2008. Under the current Growth Policy test with a change to reduce the accepted level of enrollment from 105 percent to 100 percent, all clusters except Clarksburg pass the test. Under the current Growth Policy test with a change to reduce the accepted level of enrollment from 105 percent to 95 percent, the Kennedy cluster (to which the subject development would send students) would fail the capacity test at the elementary level. The Kennedy cluster also would fail if the MCPS capacity test were applied.

At least two community members raised concerns about school overcrowding, but no specific evidence was introduced. With no evidence presented to the contrary, the District Council

considers Mr. Crispell's email a sufficient basis to find that additional elementary school capacity is reasonably probable of fruition in the foreseeable future, and that, therefore, the proposed rezonings would not have an adverse impact on and would be adequately served by the public schools.

#### **F. Environment and Stormwater Management**

Testimony from two environmental experts indicates that the northern corner, where a stream fragment flows through the site, is the most environmentally sensitive area of the site. The Development Plan and other drawings identify an "environmental buffer" around the stream bed, which is designed to protect the stream from further damage and create conditions conducive to its recovery. All impervious surfaces, including buildings and roads, would be removed from the environmental buffer, and a substantial number of trees would be planted within the buffer. In addition, required stormwater management facilities would improve the quality and decrease the quantity and velocity of stormwater run-off flowing into the stream. All of these elements would, in the opinion of the two environmental experts who testified at the hearing, create at least the potential for the health of the stream to improve.

The subject site currently contains 114 trees that are considered "significant" or "specimen" trees, 91 of which would be cut down in connection with the proposed development. Those that would survive are located in the environmental buffer area, and they include most of the trees that qualify as "forest." The Applicant would comply with the County's forest preservation law by planting 1.7 acres of forest in the environmental buffer area, 514 street trees on site and 4.9 acres of forest off-site. A preliminary forest conservation plan has been approved by Technical Staff, indicating that the Planning Board's staff considers the proposed forestation activities to be reasonable.

Having been developed in the 1960s, the subject site currently has no stormwater controls. Stormwater run-off flows directly into storm drains, untreated, and with its natural volume and velocity unchecked. This has contributed to poor water quality in the stream fragment that goes through the site, as well as erosion of its banks.

Expert testimony presented at the hearing described the Applicant's intention to use innovative and sustainable stormwater management practices on this site that will mesh with the stream

valley corridor, such as vegetative filtering of stormwater run-off, planting in depressed areas, using permeable paving and porous pavement, providing water features that have both an aesthetic component and a stormwater management function, and using green roofs on buildings.

Most of the environmental features discussed in the testimony do not appear in detail on the Development Plan. The Development Plan does delineate, however, the environmental buffer, and a textual binding element states that no structures or impervious surfaces shall be located within the environmental buffer. In addition, the "Binding Design Principles" include several commitments that relate to stormwater management and other environmental features.

### **G. Development Plan Findings**

The District Council finds that the Development Plan submitted with this application does not satisfy all of the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

**§59-D-1.61(a): substantial consistency with use and density indicated in master plan, no conflict with other county plans and policies.** As discussed in Part D above, the District Council concludes, based on the preponderance of the evidence, that the proposed rezoning and development would substantially comply with the use and density recommended in the Sector Plan. On balance, the evidence suggests that the proposed development would not conflict with any established county plan or policy. Moreover, the evidence indicates that the proposed rezoning will be consistent with the Annual Growth Policy and the Capital Improvement Program.

**§59-D-1.61(b): purposes of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.**

#### **1. Intent and Purpose of the Zone**

Section 59-C-8.21 of the Zoning Ordinance states that the TS-R Zone is intended to be used in transit station development areas and in locations where multiple-family residential development already exists or is recommended by the master plan. The District Council finds that the proposed rezoning will satisfy this intent because the subject property is located within the transit

station development area defined in the Sector Plan, most of the subject property is currently in multi-family use, and two confronting properties, at the northeast and southeast corners of Layhill Road and Glenallan Avenue, are also in multi-family use.

The purposes of the TS-R Zone are to promote the effective use of transit station development areas; to provide residential uses within walking distance of transit stations; to provide a range of densities to match the diverse characteristics of the County's several transit station areas; to stimulate coordinated, harmonious development; to prevent detrimental effects on the use or development of adjacent properties or the surrounding neighborhood; to provide housing for persons of all economic levels; and to promote health safety and welfare.

The evidence amply demonstrates that the proposed development would make effective use of the Glenmont transit station development area by increasing the amount and type of housing opportunities in close proximity to the Glenmont Metro. The entire development would be within easy walking distance of the Metro. The site layout as shown on the Development Plan provides direct pedestrian routes to the Metro station from all parts of the site. The Development Plan also provides for ground floor retail uses that would be compatible with the new development and beneficial to Metro commuters and the surrounding community. The residential density proposed in these applications is consistent with the recommendations of the Sector Plan, and would represent a new housing choice in Glenmont, more urban and transit-oriented in character than the existing suburban densities. It would also include housing for persons of various economic levels.

Based on the purpose clause language about "coordinated, harmonious development," preventing detrimental effects and promoting health, safety and welfare, compatibility is, effectively, an element of the purpose clause. With the exception of traffic impacts, the District Council finds that the proposed development would be compatible with the surrounding area, in terms of both the uses and the physical structures. The primary land use would be a mix of townhouses and multi-family residential buildings. The closest existing residences are similar uses, in the form of condominiums and apartments, making the proposal very compatible. Retail uses would be concentrated on the west side of the site,

closer to Georgia Avenue, and would be beneficial for the entire Glenmont community. Adverse impacts between the Metro station and the proposed development are unlikely given the urban setting, the intervening width of the road right-of-way and setbacks, and existing and planned landscaping. The proposed development may also be expected to have positive effects for Metro by increasing ridership and providing convenient, nearby retail for Metro commuters. The church on the corner of Glenallan Avenue and Georgia Avenue likewise might gain additional parishioners, with a higher population density on the site. Churches are often found in both residential neighborhoods and commercial areas, suggesting that the mix of uses proposed in these cases would be compatible with the church and its activities. The rest of the surrounding area is separated from the subject site by major roadways and the Metro station property, so the impact of the proposed uses and associated activity levels would be attenuated.

The building types proposed for the subject site also would be compatible with the surrounding area. While the nearby apartment and condominium complexes primarily have low-rise buildings with two and a half or three stories, they are separated from the subject site by the 120-foot right-of-way of Layhill Road, in addition to a change in grade. The closest dwellings, in the Winexburg community, are screened from both the road and the subject site by significant landscaping. Photographic evidence suggests that with the possible exception of the steeple, the church is significantly lower than the maximum height of 85 feet proposed on the Development Plan. However, the church is separated from the site by the right-of-way of Glenallan Avenue, and would be further separated from the closest buildings by a minimum building setback of 25 feet from the curb. The visual impact of the new buildings also would be softened by proposed streetscaping. For residential and other uses farther removed from the subject property, the proposed development would be an appropriate transition from the Metro entrance and garage to the Red Line terminus and the Metro train yard.

Several community members argued that the proposed development would not be compatible with the surrounding area because it would introduce new elements to Glenmont: taller buildings, structures built closer together in a more urban form, higher population density and more

expensive housing. These elements are precisely what the Sector Plan recommended, in an effort to revitalize an area that has seen little re-investment in recent decades, and to take full advantage of the substantial public investment in the Metro station. With higher density homes close to Metro, more people can adopt a transit-oriented lifestyle that is less dependent on the automobile, which has long been one of the County's primary goals for Metro station areas. Admittedly this represents a change for Glenmont, but this change is driven by a policy decision that the County Council and the Planning Board made when the Sector Plan was approved and adopted. Moreover, with the height limits that community representatives succeeded in negotiating with the Applicant and the extensive Textual Binding Elements and Binding Design Principles, the record provides a high level of assurance that the final plan for the subject site will, if the project goes forward, be an asset for the existing community as well as new residents. Diversity in housing prices and income levels likely would strengthen Glenmont over the long-term, and the evidence suggests that the realities of the market would likely lead to dwellings that are more expensive than the average Glenmont home, but not as high-priced as other areas such as downtown Bethesda. With the minimum setbacks specified, and the roadways separating the site from other residences, even 85-foot buildings are unlikely to "loom" over existing residences. They are more likely to form an agreeable skyline. With a commitment to two major public open spaces and several minor ones, plus five-foot sidewalks and street trees throughout the site, the proposed development is unlikely to give the appearance of an unbroken wall of buildings that some community members fear. Finally, the retail component of the plan is likely to contribute to a vibrant new Center for Glenmont with attractive, convenient shopping and dining options and spaces for people to gather and interact.

There is no evidence that the existing development on the subject site, surrounded by fencing, contributes in any significant way to the sense of community in Glenmont. The development this Applicant has proposed has the potential to make a significant contribution along those lines because of the open space and retail components. In the District Council's view, because the development is separated from existing residential neighborhoods by major roads and Metro facilities, it is unlikely to detract from the sense of community that Glenmont's residents are fortunate enough to have created.



For all of these reasons and based on the preponderance of the evidence, the District Council concludes that with the exception of traffic impacts, which are discussed separately, the proposed development would be compatible with the surrounding area and would satisfy the purpose and intent of the TS-R Zone.

## **2. Standards and Regulations of the Zone**

The TS-R Zone includes requirements regarding location, which echo the intent of the zone as discussed above. The zone also includes a requirement that development conform to the facilities and amenities recommended by the Sector Plan, including any necessary easements or dedications. The District Council finds that the proposed development would comply with this requirement. The open spaces, pedestrian-friendly streets and streetscaping are assured by binding elements. The internal street parallel to Glenallan Avenue is provided for, although its meandering design – appropriate for a development that stresses pedestrian-friendly streets – is unlikely to relieve traffic pressures on Glenallan Avenue. Moreover, the road right-of-way dedications called for in the Sector Plan are specifically shown on the Development Plan, and the Planning Board would have discretion at site plan to require additional amenities as needed.

All of the uses proposed on the Development Plan are permitted as of right in the TS-R Zone. The proposed development would be consistent with applicable development standards, as shown in the table on page 182 of the Hearing Examiner's Report and Recommendation. The TS-R Zone further requires off-street parking to be located so as to have a minimal impact on adjoining residential properties. This requirement would be satisfied by locating parking in garages, parking decks, driveways, or parallel-parking spaces on the street, avoiding unattractive surface parking lots.

Streets in the TS-R Zone must have a minimum width of 20 feet for two-way traffic or ten feet for one-way traffic. The Textual Binding Elements specify that all streets will meet county standards for emergency access, which comport with the requirements of the Zone.

The TS-R Zone indicates that ancillary commercial uses must be consistent with master plan recommendations. The proposed commercial uses would be below the maximum FAR specified in the Sector Plan, and would conform to the ground-level retail the plan recommends.

### **3. Maximum Safety, Convenience and Amenity of the Residents**

The proposed development would serve the safety, convenience and amenity of site residents by providing pedestrian-friendly, transit-oriented, urban-style housing options in a development with excellent transit access, extensive streetscaping and open spaces, and the convenience of on-site retail. The Applicant cannot commit to specific pedestrian-safety measures along Glenallan Avenue because of the need for county approval, but the evidence establishes a clear intent to work with the appropriate agencies to develop measures such as pedestrian crossing signals, which will allow site residents to make use of their convenient Metro access safely, and will allow area residents to access the subject site safely.

### **4. Compatibility**

For the reasons discussed in Part 1 above, the District Council concludes that the proposed development would be compatible with the land uses in the surrounding area.

**§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.** The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient.

**§59-D-1.61(d): preservation of natural features.** The site's limited natural resources include a stream fragment in the northern corner, surrounded by a partially forested and partially built area, and a number of trees in various locations throughout the site. The proposed Development Plan would remove all structures and impervious surfaces from an environmental buffer around the stream, which is the most environmentally sensitive portion of the site. The preliminary forest conservation plan, which has won the approval of Environmental Planning Staff at the MNCPPC, provides for the removal of most of the significant specimen trees on site, but requires many more trees to be planted in the environmental buffer area, where they can contribute to improving the health of the stream, and as

street trees throughout the site. Moreover, most of the trees that qualify as "forest" would be preserved. The Applicant provided extensive documentation and testimony concerning its intention to employ innovative stormwater management techniques to satisfy the County's water resource protection requirements, which would also contribute to improving the health of the stream. The District Council concludes that the preponderance of the evidence supports an affirmative finding under this provision.

**§59-D-1.61(e): common area maintenance.** The Applicant has submitted a written outline of its plans for perpetual maintenance of the common areas and quasi-public use space through an owners' association, which was confirmed in testimony. The District Council finds the submitted outline and supporting testimony to be adequate and sufficient evidence that common areas and quasi-public use spaces would be adequately maintained in perpetuity.

#### **H. Public Interest**

The District Council concludes that except for traffic impact, the proposed zoning bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

" . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district."  
[*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As discussed in Part D above, the District Council finds that the subject application would be in substantial compliance with the recommendations and objectives of the *Glenmont Sector Plan*. Some community members object fundamentally to the Sector Plan's goal of making Glenmont different from what it has long been: a suburban neighborhood of modest single-family homes and garden apartments in an area with limited retail options, but a great sense of community. Many community members are concerned about bringing in different types of housing and different types of residents. As noted earlier, however, the change represented by the proposed development would carry

out a policy decision that was made when the Sector Plan was approved and adopted. Moreover, the District Council is persuaded by the preponderance of the evidence that if the traffic impact problem is resolved, the proposed development will be an asset for the existing Glenmont community, as well as for the new residents.

The evidence supports a conclusion that utilities are adequate to accommodate the proposed development. The District Council further concludes, because (1) all school clusters in the County are considered to have adequate capacity to support additional development under the current Growth Policy capacity test; and (2) the school system's director of long-range planning has opined that the next CIP will provide for improvements that will resolve the elementary school capacity problems in the Kennedy cluster; that the public schools would be able to accommodate the proposed development without adverse impact on the school system.

The one important public facility area in which the District Council finds the evidence lacking is roadways. For the reasons discussed in Part E above, the District Council finds that the Applicant has not met its burden of demonstrating that the proposed development would not have an adverse impact on the local roadway network.

Considering the public interest in a more general sense, the evidence supports a finding that apart from the traffic impact, the proposed development would serve the public interest by beginning the implementation of the Glenmont revitalization plan put forth in the Sector Plan, and would do so in a way that has every indication of being an asset to the existing neighborhood.

Nonetheless, due to the lack of adequate evidence to demonstrate compatibility with regard to traffic, the Hearing Examiner concludes that approval of the requested zoning reclassifications on the existing record would not be in the public interest.

The District Council finds that the Applicant has not met its burden of demonstrating compatibility with regard to traffic impacts for either Stage 1 or Stage 2. It is possible, however, that with an opportunity to provide additional evidence, the Applicant may be able to meet its burden and

allow approval of a development that is otherwise consistent with county policies and in the public interest. For these reasons, the applications will be *remanded* in the manner set forth below.

### ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

That (1) Zoning Application No. G-862, which requests reclassification from the R-T 12.5, R-30 and O-M Zones to the TS-R Zone of 23.9 acres of land located at the intersection of Georgia Avenue and Glenallan Avenue in Silver Spring, Maryland, in the 13<sup>th</sup> Election District, consisting of Lots 1 through 49 and Parcels A, B and C in the Glenmont Mews Subdivision; parts of Parcel A, B and G in the Glenmont Park Subdivision; and Parcels C, E and F in the Glenmont Park Subdivision; and (2) Zoning Application No. G-863, which requests reclassification from the R-30 Zone to the TS-R Zone of 7.0514 acres of land adjacent to the land covered by Application No. G-862, consisting of parts of Parcels A, B and G in the Glenmont Park Subdivision; be **remanded** to the Hearing Examiner to provide the Applicant with the opportunity to present additional evidence (i) concerning traffic conditions at the intersection of Randolph Road and Georgia Avenue, such as a queuing and delay analysis; (ii) to show what steps the Applicant is willing to take to mitigate its traffic impacts, which may include but need not be limited to the at-grade improvements already proposed; and (iii) to demonstrate that the proposed mitigation would prevent adverse traffic impacts on the surrounding area from Stage 1 or the combined Stage 1 and Stage 2 of the proposed Glenmont Metrocenter.

Dated:

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of Council

**APPENDIX 1 TO COUNTY COUNCIL RESOLUTION NO. \_\_\_\_**

**G-862: STAGE 1, GLENMONT METROCENTER**

The tax accounts for certain real property located at the intersection of Georgia Avenue and Glenallan Avenue in Silver Spring, Maryland, comprising approximately 23.8810 acres of land, consisting of (a) and (b) below.

(a) the following parcels or parts of parcels owned by Glenmont Hill Associates and described in the tax assessment records for Montgomery County, Maryland as follows:

<u>Tax Map</u>	<u>Parcel</u>	<u>Account Number</u>	<u>Assessed Square Footage</u>
JQ13	N165	13-00958966	21,651
HQ63	N072	13-00959425	199,844
HQ63	N087	13-00959436	428,630
HQ63	N082	13-00959447	288,750
HR16	N937	13-00959460	16,718
HR16	N992	13-03119220	200,001

(b) the following parcels in the Glenmont Mews Subdivision (Tax Map JQ13, Subdivision 275) owned by Edgewood Hill Associates and described in the tax assessment records for Montgomery County, Maryland as follows:

<u>Lot</u>	<u>Account Number</u>	<u>Assessed Square Footage</u>
A	13-02584817	50,209
B	13-02584828	9,451
C	13-02584830	46,047
1	13-02584874	1,875
2	13-02584885	1,500
3	13-02584896	1,500
4	13-02584908	1,500
5	13-02584910	1,500
6	13-02584921	1,500
7	13-02584932	1,500
8	13-02584943	1,875
9	13-02584954	1,875
10	13-02584965	1,500
11	13-02584976	1,500
12	13-02584987	1,500
13	13-02584998	1,500
14	13-02585003	1,500
15	13-02585014	1,875
16	13-02585025	2,014
17	13-02585036	1,505
18	13-02585047	1,561
19	13-02585058	1,588
20	13-02585060	1,588

<u>Lot</u>	<u>Account Number</u>	<u>Assessed Square Footage</u>
21	13-02585071	2,224
22	13-02585082	2,224
23	13-02585093	1,588
24	13-02585105	1,588
25	13-02585116	1,588
26	13-02585127	2,224
27	13-02585138	1,925
28	13-02585140	1,540
29	13-02585151	1,540
30	13-02585162	1,540
31	13-02585173	1,925
32	13-02585184	1,925
33	13-02585195	1,540
34	13-02585207	1,540
35	13-02585218	1,540
36	13-02585220	1,540
37	13-02585231	1,925
38	13-02585242	2,085
39	13-02585253	1,700
40	13-02585264	1,700
41	13-02585275	1,700
42	13-02585286	1,700
43	13-02585297	2,125
44	13-02585300	2,214
45	13-02585311	1,738
46	13-02585322	1,709
47	13-02585333	1,680
48	13-02585344	1,651
49	13-02585355	2,022

**G-863: STAGE 2, GLENMONT METROCENTER**

The tax accounts for certain real property located at the intersection of Georgia Avenue and Glenallan Avenue in Silver Spring, Maryland, comprising approximately 7.0514 acres of land, consisting of the following parts of parcels owned by Glenmont Hill Associates and described in the tax assessment records for Montgomery County, Maryland as follows:

<u>Tax Map</u>	<u>Parcel</u>	<u>Account Number</u>	<u>Assessed Square Footage</u>
HQ63	N072	13-00959425	199,844
HQ63	N087	13-00959436	428,630
HR16	N992	13-03119220	200,001






AGENDA ITEM #13  
Supplemental Packet  
January 15, 2008

**Background Policy Issue**

**MEMORANDUM**

January 10, 2008

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Background - Policy issue in Local Zoning Map Amendment G-862/G-863 and ZTA 07-17

**Policy Issue:** Should the Council amend the Zoning Ordinance to establish standards for the adequacy of transportation facilities as a necessary finding for the approval of any local zoning map amendment?

**Staff Recommendation:** The Council should amend the Zoning Ordinance to reflect the Council's policy judgment. Adequate transportation capacity can be defined in a manner that conforms to the Council's infrastructure and land use objectives. Residents and land owners would know the findings necessary for zoning approval. If the Council agrees that a transportation standard should be established to gauge future local zoning map amendments, staff could provide a range of options. The most rigorous option would be to make the zoning test the same as the subdivision test.

**Events raising this issue:** There are now two items before the Council that call into question the standards for transportation adequacy when the Council makes decisions on local zoning map amendments: 1) local zoning applications G-862 and G-863; and 2) a Zoning Text Amendment 07-17. The generic policy issue imbedded in local zoning map amendment G-862 and G-863 is whether meeting the local area transportation review test as established by the Council in the Growth Policy is sufficient by itself to establish adequate roadway capacity for a proposed development.

It is logical to require an applicant for a local zoning map amendment to submit information that demonstrates the adequacy of transportation facilities. ZTA 07-17 would require an applicant to submit sufficient information to show that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards

in effect when local zoning map amendment application is submitted. ZTA 07-17, as introduced, would not establish any standards as the basis for the Council to determine if transportation facilities are adequate. If something other than the Growth Policy standards should be used to determine the adequacy of roadway facilities for zoning purposes, then something other than the Growth Policy information should be filed with the application.

**General Background:** Balancing the amount of development with the capacity of planned facilities is an issue that must be resolved in every adopted master plan. In order to implement the plan's development vision, master plans recommend Euclidian zones, floating zones, and public facilities. Euclidian zones are applied by a sectional map amendment soon after the adoption of the plan without any additional proof of adequate facilities. Comprehensive rezonings of this nature are rarely overturned by the Maryland courts. Euclidian zones that allow an optional method of development are much like floating zones; however, discretionary decisions required by optional methods of development are resolved by the Planning Board, not the Council.

Floating zones, approved by a local zoning map amendment, are more difficult to apply than Euclidian zones that are approved by a sectional zoning map amendment. Maryland courts view floating zones much like a special exception use; the zone is consistent with the comprehensive plan, but special circumstances are generally required for approval. In contrast to sectional map amendments, which generally are proposed by the Planning Board, floating zones place the application burden on the landowner. In the absence of any statutory requirement, courts require that a floating zone application must be: 1) consistent with the master plan; 2) in conformance with the purpose of the zone; and 3) compatible with the surrounding neighborhood. Findings related to compatibility and the general welfare of the community include traffic concerns. Evidence of adequate transportation facilities is a material aspect of compatibility even though the law has no definition of adequate.

What is "adequate" is a matter of policy. Transportation engineers have made it possible to set objective standards; however, there is no universally accepted definition of adequate roadway capacity. Two points are at issue: 1) what aspect of roadway capacity should be measured; and 2) once measured, how much congestion is acceptable. Most jurisdictions use one of the "Level of Service" methods in the Transportation Research Board's Highway Capacity Manual as the method to measure adequacy. The Manual describes how adequacy can be measured by either time delay at intersections or as volume to capacity ratios of roadway links. The Growth Policy's Local Area Transportation Review uses "critical lane volume" at intersections as its principal measure. The length of vehicular queues is another traffic measurement that can also be observed and calculated. Any of these methods can provide an objective measurement technique.

Measurements alone do not establish adequacy.<sup>1</sup> The Council has determined in the Growth Policy when adequate capacity becomes inadequate capacity for subdivision approvals. Many jurisdictions set different standards, depending on the nature of the area and the availability of transit.<sup>2</sup> The Growth Policy sets different standards for different areas of the County and provides an alternative process for Metro Station Policy Areas. A determination of adequacy is a conclusion based on expectations, policy goals, and measurements. It is something more than evidence of some congestion.

The Planning Board uses the Local Area Transportation Review standards (Critical Lane Volume) in the Council's Growth Policy resolution to make its recommendations on the adequacy of transportation facilities for local zoning map amendments. The Hearing Examiner is open to any evidence to support or refute adequate roadway capacity, in each case, as a basis for the Hearing Examiner's recommendation to the Council. If opponents to an application present sufficient evidence of a lack of adequate facilities, the Hearing Examiner will make a negative recommendation on the application without regard to the Growth Policy standards.

### **Rationale to *not* establish an adequate transportation capacity standard**

The lack of specific transportation capacity standards does not mean that traffic can be ignored when the Council adopts its opinion on a local zoning map amendment.<sup>3</sup> Generally, the Growth Policy standards used by the Planning Board staff are evaluated as a matter of course; however, the Hearing Examiner (and the Council) may look at **any** evidence concerning traffic because the Zoning Ordinance is silent on the specific findings necessary to approve a local zoning map amendment application. Opponents may present evidence concerning any aspect of congestion. They can introduce evidence that the criteria used by the applicant to prove adequate capacity are an inappropriate measure for a particular intersection.

Providing an open opportunity for any traffic evidence in the Hearing Examiner's record allows a maximum of community participation. Residents have an opportunity to be heard in a meaningful manner, and the applicant can refute the evidence presented. A standard that could only be measured by a traffic engineer would constrain opponents' relevant testimony. This constraint might be seen as tilting the scales in favor of approving more development.

A legislative standard would narrow the Council's discretion on the issue of adequate facilities. Evidence outside of the standard could not become the basis of a Council decision.

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<sup>1</sup> There is no universally accepted point on any traffic measurement scale that indicates when traffic is intolerable to a community. What might be tolerable to some people is intolerable to others; for example, the Fahrenheit scale on a thermometer indicates a measure of temperature, but individuals find it to be intolerably "hot" at different temperatures.

<sup>2</sup> "Vehicle Level of Service in Transit Station Areas: A Survey of Current Practice", a report prepared for the Metropolitan Washington Council of Governments Transportation/Land Use Connections Program, by Kelly J. Clifton (November 26, 2007).

<sup>3</sup> The Hearing Examiner's report includes traffic impacts when recommending a rezoning to the Council. Traffic is a matter of health, safety, and general welfare as well as compatibility; health, safety, and general welfare is the legal foundation for zoning.

The standard would be in place for all cases even if unique circumstances exist. The Hearing Examiners believe that a standard should not be adopted by legislation.

### **Rationale to establish an adequate transportation capacity standard**

Lack of a standard for transportation capacity places burdens on the proponents and opponents of any floating zone. Proponents must be willing to provide any variety of analysis required by the Hearing Examiner or the Council. The applicant has the burden of proof to establish the adequacy of traffic infrastructure facilities. Opponents must be sufficiently savvy to produce some evidence that adequate roadway capacity does not exist, without knowing the criteria that will persuade the Hearing Examiner and the Council.

A myopic look at roadway congestion, particularly near transit options, may not serve the interests of the County. The Council adopted a policy that allows more development and congestion near transit stations than in other areas of the County. This problem was recognized by a Council of Governments report:

Requiring sufficient road capacity to maintain ...[low roadway congestion levels] within transit-oriented development (TOD) can create obstacles to approving more compact, mixed use development, which concentrates trip generators in one place and has the potential to increase the number of trips in the area, including those made by automobile. The supply-side mitigations can also degrade the transportation environment for other modes of travel. For example, widening intersections or increasing the green time on traffic signals can create more difficult conditions for pedestrians. On the other hand, many infill and TOD projects cannot rely on transit and foot traffic alone to be financially viable, particularly in their early stages of development and reasonable access by automobile traffic may be necessary. The challenge ... is finding the appropriate balance between transportation modes.<sup>4</sup>

Having a standard to evaluate congestion avoids the risk of an arbitrary decision. **If any evidence of congestion were the standard to judge all future local map amendments, then no future local zoning map amendments would be approved.** Congestion is a condition of life in growing metropolitan areas.<sup>5</sup> A standard in the zoning law could settle the issue of how much congestion is tolerable.

It is the Council's role to establish standards that balance the County's land use goals and infrastructure expectations. The Council comprehensively addressed the question of adequate facility standards for subdivisions in its Growth Policy resolution. These standards could be incorporated into the findings necessary to approve a local zoning map amendment. Standards

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<sup>4</sup> Op cit., "Vehicle Level of Service in Transit Station Areas: A Survey of Current Practice", page 2.

<sup>5</sup> "...traffic congestion is an inescapable condition in large and growing metropolitan areas across the world. Peak-hour congestion is an inherent result of the way modern societies operate, and the strong desires of their residents to pursue goals that inevitably overload existing roads and transit systems every day." Still Stuck in Traffic, Anthony Downs (2004).

that require more facilities or less development would likely make the land use vision of each adopted master plan impossible to achieve.

The testimony on the single issue of an applicant proving sufficient roadway capacity would be constrained if a standard were adopted.<sup>6</sup> Evidence of a different measure from the one approved by the Council would not be relevant. Evidence that traffic counts were inaccurate or taken on a day of unusual traffic conditions would be relevant. Any evidence of an error in any calculation would also be important to hear. Other issues such as safety, ingress and egress, and roadway access by neighboring land uses could still be brought to the Hearing Examiner's attention by parties to the proceeding.

### **Legal background:**

#### **What is the relationship between traffic and zoning?**

Traffic issues predated zoning by more than a century. The obstruction of the King's highway constituted a public nuisance and was therefore indictable at common law.<sup>7</sup> Traffic congestion which causes a traffic obstruction was determined to be a nuisance by the New York Court of Appeals in 1889.<sup>8</sup> A nuisance is something that can be avoided by the use of a locality's power to act on behalf of its health, safety, and general welfare (zoning), according to the Supreme Court:

Thus the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality.... A nuisance may be merely a right thing in the wrong place, - like a pig in the parlor instead of the barnyard.<sup>9</sup>

The consequence that private property rights are constrained but not eliminated by the public interest is well established in Maryland:

It is axiomatic that the individual right to use privately owned property is subordinate to the paramount right of the public whenever such use tends to affect injuriously the health, comfort, safety and general welfare of all persons in a community, provided, however, that such zonal restriction is itself lawful and not such as to permanently deprive the property owner of all reasonable use of his property.<sup>10</sup>

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<sup>6</sup> If critical lane volume is the standard, then evidence of time delay is not relevant to the decision.

<sup>7</sup> "The King's highway is not to be used as a stable-yard." *Rex v. Cross*, 3 Camp. 224, 226 (1812).

<sup>8</sup> *Cohen v. Mayor*, 113 N.Y. 523, 21 N.E. 700 (1889).

<sup>9</sup> *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

<sup>10</sup> *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206, 212 (1957).

## How is traffic considered when rezoning land?

Maryland courts have been particularly concerned about traffic when rezoning or special exception issues are presented. Traffic concerns may be a material consideration in any rezoning decision.<sup>11</sup> When traffic considerations were ignored by the decision maker, the Courts have overturned the decision.<sup>12</sup> The decision maker's conclusion must be fairly debatable to avoid being arbitrary. The amount of evidence required to make an issue fairly debatable is not great. In one often cited case, witness testimony of long traffic queues and traffic accidents was sufficient to support a decision to deny a rezoning.<sup>13</sup> In another case, evidence of dangerous traffic conditions and traffic counts by one witness was sufficient to warrant a denial of the requested rezoning.<sup>14</sup>

Although an increase in traffic should be considered in rezoning cases, it is not controlling in all cases.<sup>15</sup> More weight can be given to some testimony on the effect of a rezoning on traffic conditions than simply an allegation of increased traffic.<sup>16</sup>

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<sup>11</sup> *Bigenho v. Montgomery County Council*, 248 Md. 386 (1968).

<sup>12</sup> *Price v. Cohen*, 213 Md. 457 (1956); *Marino v. Baltimore*, 215 Md. 206 (1957); *County Commissioners of Howard County v. Merryman*, 222 Md. 314 (1959),

<sup>13</sup> "Certain witnesses for those protesting against the granting of the application, testified that there were severe traffic conditions at the intersection. One witness testified that at times the traffic was backed up from the intersection in both directions for over one-half a mile and that there had been a number of accidents at what he described as a traffic bottleneck. There was other testimony on behalf of the protestants indicating a dangerous traffic condition at the intersection which would be aggravated by the erection of the proposed apartment house." *Tauber and Gould Trustees v. Montgomery County Council*, 244 Md. 332, 336 (1965).

<sup>14</sup> "The residents in the vicinity of the subject property testified in regard to the dangerous traffic conditions observed by them on Oberon Street and Plyers Mill Road.... In *Tauber* the expert witness for the applicants in that case had made traffic counts; in the instant case no such traffic counts were made by the expert witness who testified for the applicants. Indeed, the only traffic counts made in the present case were those made by one of the witnesses for the protestants who testified in opposition to the granting of the application." *Montgomery County v. Laughlin*, 255 Md. 724, 734 (1969).

<sup>15</sup> "Appellants draw attention to the claim that commercial and apartment zoning is likely to bring more people to a given area and that as a consequence the traffic and school population will increase, and that those members of the neighborhood using the local school and shopping area will suffer from the consequent traffic congestion and over-populated school facilities. These are inconveniences likely to be suffered by any member of the public, far or near, and do not require a denial of the application." *Marcus v. Montgomery County*, 235 Md. 535, 541 (1964).

<sup>16</sup> "In the proceedings below before the Council there was expert testimony on both sides as to the effect of the proposed zoning on traffic conditions in the area. The Council chose to give more weight to the testimony of the applicants' expert Voorhees, whose qualifications as a traffic expert were not questioned. This witness testified that the roads in the area were sufficient to take care of the traffic flow resulting from the development of the subject property. Also the proposed general plan for the area would tend toward lightening the traffic in that the I-3 and C-P zones will furnish employment sources for many of those living in the R-H zone thus eliminating many outgoing and incoming trips. Also pedestrian promenades were provided for in the subject area that would further tend to minimize vehicular traffic." *Bigenho v. Montgomery County Council*, 248 Md. 386, 395 (1968)

## What legislation controls courts that rule on rezoning?

Zoning is a delegation of Maryland's police power to the county. The power to zone or rezone is granted only by statutory delegation and can be exercised only to the extent and in the manner the legislature has said that it may be.<sup>17</sup> All charter counties in Maryland have delegated powers under Article 66B of the Maryland Code. Montgomery County's delegated powers are in Article 28 Title 8 of the Maryland Code. Unlike other charter counties, the state law does not require any specific anti-congestion related purposes for zoning regulations in Montgomery County.<sup>18</sup> The State granted Montgomery County very broad zoning authority.<sup>19</sup> The County is explicitly authorized to adopt its own procedures for both zoning text amendments and zoning map amendments.<sup>20</sup>

The Maryland courts have been very respectful of legislatively enacted zoning rules. Floating zones, for example, are accorded special status; they are viewed as zones that are potentially consistent with a master plan and are not subject to the courts' "change or mistake" rule. With regard to local policy and law, the Court of Appeals will look at the proposed development's consistency with the master plan and the purpose of the zone.<sup>21</sup> As noted earlier, floating zones are like a special exception: the compatibility of the proposed development with the surrounding area is also a consideration.<sup>22</sup>

The County Zoning Ordinance does not require any explicit findings to rezone land to zones that do not require a development plan; however, traffic is infused into the Council's decisions as a matter of compatibility and concern for the general welfare. Under County law, zones that require development plans require more specific findings. The Council must make a specific finding that any development plan would "not conflict with the general plan, the county

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<sup>17</sup> Crozier v. County Commissioners of Prince George's County, 202 Md. 501 (1952)

<sup>18</sup> Article 66B§4.03 (b) Maryland Code, "Purposes- The regulations shall be designed to: (1) Control congestion on the streets...". This purpose is not found in Article 28 Title 8 of the Maryland Code.

<sup>19</sup> Maryland Code, Article 28, Title 8.

<sup>20</sup> Maryland Code, Article 28, §8-104 (a).

<sup>21</sup> "...this zone was a "floating" zone rather than the usual Euclidean Zone and that the Maryland "change or mistake" rule did not apply to the granting or rejecting of an application for this type of zone. On the contrary, the zone is in the nature of a special exception and the vital and decisive determination by the District Council is whether the application complies with the expressed purposes for which the accomplishment of this floating zone was established. These purposes are designed to insure that this floating zone is compatible with the other existing uses in the general neighborhood of the property for which R-H zoning is sought." Audinoe v. Lewis, 250 Md. 645, 652 (1968); Montgomery County, Maryland et. al. v. Greater Colesville Citizens Association, Inc., 70 Md. App. 374 (1986).

<sup>22</sup> "...the floating zone is subject to the same conditions that apply to granting a special exception, i.e., the use must be compatible with the surrounding neighborhood, it must further the purpose of the proposed reclassification, and special precautions are to be applied to insure that there will be no discordance with existing uses." Bigenho, et al. v. Montgomery County Council, et al., 248 Md. 386, 391 (1968); The Mayor and Council of Rockville et al. v. Rylyns Enterprises, Inc. 372 Md. 514 (2002).

capital improvements program or other county plans and policies.”<sup>23</sup> In addition, the Council must find that the proposed development “would be compatible with adjacent development.”<sup>24</sup>

### **Can County law remove or restrict traffic considerations from zoning decisions?**

The Court of Special Appeals has answered this question in the affirmative.<sup>25</sup> Washington County required an applicant for a Planned Unit Development Zone to “be located adjacent to adequate roadway facilities capable of serving existing traffic and the future traffic generated by the uses in the PUD.” Any project would then be required to prove the existence of adequate transportation facilities in the subdivision process. The Court held that this two-step approach was the legal intention of the County.

Section 16.4(b) plainly and simply states the County Commissioners' intention that a specific piece of property, re-zoned as a PUD, be located adjacent to roadway facilities that can adequately support the uses generated by the PUD. Contrary to appellant's argument, the statute does not state, or even imply, that the County Commissioners must assure themselves, at the time of re-zoning, that roadways adjacent to the property are able at that time to accommodate future traffic generated by the uses of the PUD....

We have also examined § 16.7....Subsection (i) of that section is titled, "Traffic Circulation and Parking," and provides, in pertinent part, that "existing and planned streets and highways shall be of sufficient capacity to serve existing traffic and all new traffic *when fully developed*." Section 16.7, read together with § 16.4(b), confirms the County Commissioners' conclusion that the latter provision does *not* require their determination, at the re-zoning stage, that adjacent roads are currently capable of handling both existing traffic and the predicted future needs of the PUD.

This construction of § 16.4(b) also makes sense in light of § 1.2 of the APFO. Section 1.2 of the APFO provides that the purpose of the ordinance is to ensure "that public facilities and services needed to support new development shall be available *concurrently with* the impacts of such new developments." It follows from the use of the word "concurrently," that public facilities, including roads, need not be available *in advance* of "the impacts of such new developments."

...We conclude that the PUD rezoning scheme in Washington County, like the scheme at issue in Greater Colesville, is more flexible and more effective than the reasonably probable of fruition in the foreseeable future

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<sup>23</sup> Montgomery County Code §59-D-1.61(a).

<sup>24</sup> Montgomery County Code §59-D-1.61(b).

<sup>25</sup> James Cremins v. County Commissioners of Washington County, Maryland, 164 Md. App. 426 (2005).



test. Indeed, in Washington County, development of a PUD, or any phase of a PUD, may not begin until the Planning Commission is satisfied that the required improvements to public facilities are made. We conclude, as we did in Greater Colesville, that under the zoning scheme we consider, "improvements that are reasonably probable of fruition in the foreseeable future become reasonably certain of fruition."<sup>26</sup>

Given that the courts have approved a legislative scheme that does not require any proof of a transportation network's capacity to handle new development when a zoning decision is made, it is highly probable that that the courts would look favorably on a legislative standard of transportation adequacy.

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<sup>26</sup> Ibid.


AGENDA ITEM #13  
Supplemental Packet 2  
January 15, 2008

ADDENDUM

**MEMORANDUM**

January 14, 2008

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Local Map Amendment G-862 and G-863

The request for oral argument from Mr. Ross was not included in the packet of material sent to the Council on January 11, 2008. His request is attached to this memorandum.

# Action Committee for Transit

P.O. Box 7074, Silver Spring, MD 20907

October 29, 2007

Mrs. Marilyn Praisner  
President, Montgomery County Council  
100 Maryland Ave.  
Rockville, MD 20850

2007 OCT 29 PM 3:22

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

Subject: Glenmont Metrocenter, Amendment Nos. G-862 and G-863

Dear Mrs. Praisner:

The Action Committee for Transit reiterates its support of the proposed Glenmont Metrocenter mixed-use development. We urge the Council to approve zoning applications G-862 and G-863 without further delay. If the Council schedules oral argument on this matter, we request the right to participate, and ask to present oral testimony if a hearing is held.

The Hearing Examiner concluded on pp. 82-83 that the zoning applications satisfy the LATR requirements of the county's growth policy, but recommended that the applications be remanded to allow for additional evidence about traffic. The premise of this recommendation is that allowable increase in the amount of traffic on nearby roads should be less than what is specified in the county's LATR criteria; the Planning Board and its staff had found that the application satisfied the requirements for a traffic study and met the LATR criteria.

Acceptance of the Examiner's recommendations would shift the county's growth policy away from smart growth and toward sprawl. The transportation test in the growth policy does not exist in a vacuum. The county's Growth Policy reflects difficult trade-offs. Wider intersections are more convenient for cars but less so for pedestrians. Traffic congestion in the immediate vicinity is reduced, but it is worsened in the rest of the county because commuters' incentives shift away from transit and toward driving. The Council has struggled with these trade-offs over the years, and it continues to struggle with them this year in its Growth Policy debate. Our organization indeed feels that change is needed in our Growth Policy, but in the opposite direction from what the Hearing Examiner has recommended — toward roads that meet the needs of pedestrians and not just automobiles, and toward smart growth rather than sprawl. In any case, policy changes should be made when the rules are changed, not in the context of a single zoning case.

The text of the decision shows that the Hearing Examiner failed to consider the needs of all elements of the community. She writes on p. 81 that

[Non-roadway] improvements are important, and would undoubtedly be beneficial to pedestrians and transit users... but nonetheless, the question of whether the net result for the community would be a benefit or an adverse

impact has not been explored. It may be that non-roadway improvements would draw people out of their cars and onto transit, taking enough trips off the roads to offset the traffic impact of the new units, but the Applicant did not submit any evidence to that effect.

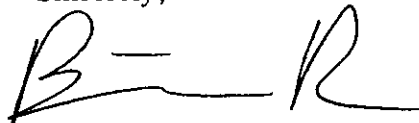
The Examiner here excludes pedestrians and transit users from the community for whose benefit the county's land-use regulation system operates. She considers pedestrian and transit improvements to be a benefit only to the extent that they remove cars from the road and thus help drivers to move faster. This premise violates the most basic principles of fairness and is utterly unacceptable to the county's transit riders.

It was for the purpose of creating a balanced transportation system rather than relying exclusively on automobile commuting that the Council allowed developers to take credit for non-roadway improvements in LATR analyses. The Examiner's driver-only analysis would reverse this policy decision. And the Examiner goes further by denying the applicant credit for those transit and pedestrian improvements that do not lead to individually quantifiable traffic reductions. Altering the hostile pedestrian environment that currently exists in areas like Glenmont is essential to increasing transit ridership, but the direct impact of individual changes like sidewalk widenings is impossible to assess.

Whether the letter of the law is to be followed, or broader transportation issues deserve consideration, the Glenmont Metrocenter project deserves approval. Under current rules, the Hearing Examiner states that the project meets all requirements. In the broader view, traffic congestion is not limited to a few isolated intersections; it is a county-wide and regional problem that can only be solved with more Smart Growth projects like this one.

The Hearing Examiner's report reflects outdated automobile-centric thinking of the kind that has gotten us into the current traffic mess. The Council and our Growth Policy have moved beyond this thinking long ago. We believe the Council should approve Glenmont Metrocenter now and make the changes that are indeed needed in how we link transportation and development by altering the rules rather than in the context of an individual project approval.

Sincerely,

A handwritten signature in black ink, appearing to be 'B-R' followed by a stylized 'R'.

Ben Ross  
Vice President

